



BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

REGULATORY
JUN 21 11 33 AM '01
Guy M. Hicks
General Counsel
615 214 6301
Fax 615 214 7406
EXECUTIVE SECRETARY

June 21, 2001

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *BellSouth Telecommunications, Inc.'s Tariff to Introduce 2001 Key
Business Discount Program*
Docket No. 01-00461

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Opposition to SECCA Petition. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jej

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re: *BellSouth Telecommunications, Inc. Tariff to Introduce 2001 Key Business Discount Program*

Docket No. 01-00461

**BELLSOUTH TELECOMMUNICATIONS, INC.'S
OPPOSITION TO SECCA PETITION**

The Petitions¹ filed by the Southeastern Competitive Carriers Association ("SECCA") in this proceeding on June 19, 2001 are utterly without merit and should be summarily denied. SECCA's quibbling over whether BellSouth's 2001 Key Business Discount Program ("Discount Program") tariff is a "promotional tariff" or some other kind of tariff is irrelevant -- it is a tariff, and BellSouth filed it as a tariff on May 25, 2001 (thirty days before its effective date). Additionally, SECCA's claim that offering discounts "in some wire centers but not in others" is a "presumptively unreasonable discrimination" is not only wrong but also patently hypocritical, given that SECCA has petitioned the Tennessee Regulatory Authority to approve a tariff that "remov[ed] the requirement that participating business customers currently have service with another local service provider and [made the] offering available to any business customers in the wire centers designated in the revised tariff."² Finally, as explained below, SECCA's nebulous and unsubstantiated "belief" with respect to "similar tariffs" in other states is wrong. The Tennessee Regulatory Authority ("TRA"), therefore, should exercise its discretion to deny SECCA's Petition, approve BellSouth's Discount Program tariff, and allow Tennessee businesses to enjoy even more of the benefits of the robust competition that exists in the business market in this State.

¹ SECCA apparently filed both a "Petition to Intervene" and a "Petition of Southeastern Competitive Carrier Association" on the same day.

² See "Joint Petition for Approval of Revised Tariff Embodying Settlement Agreement" filed in Docket No. 00-00391 (emphasis added)(Attachment 1).

I. THE TRA SHOULD EXERCISE ITS DISCRETION TO DENY BOTH THE "PETITION TO INTERVENE" AND THE "PETITION OF THE SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION"

Rule 1220-1-2-.02(4) provides that "[a] tariff filing does not constitute a contested case" and that "[i]t shall be within the discretion of the Authority to convene a contested case" when a complaint opposing a tariff is filed. This Rule is eminently reasonable and firmly grounded in Tennessee law. *See Consumer Advocate Div. v. Greer*, 967 S.W.2d 759, 763-64 (Tenn. 1998) (Tennessee law "does not impose a mandatory duty upon the Authority to convene a contested hearing in every case upon the filing of a written complaint," and "the TRA has the power to convene a contested case hearing if it chooses to exercise the authority . . ."). *Id.* at 763.³

On the basis of this authority, the TRA should summarily dismiss the "Petition to Intervene" filed by SECCA. In that Petition, SECCA seeks to "intervene as a matter of right in the above-captioned proceeding" As Rule 1220-4-2-.02(4) states, however, a tariff filing is not a contested case, and there simply is no "proceeding" in which SECCA can intervene.

The TRA should also dismiss the "Petition of the Southeastern Competitive Carriers Association" under this same authority. Rule 1220-4-2-.02(4) plainly states that "any interested person may object to the tariff by filing a complaint." (Emphasis added). Among other things, a complaint must "set forth with specificity the factual basis and legal grounds upon which the complaint is based," and it must "enumerate each statute allegedly violated by the defendant and state each fact demonstrating a violation of the statute so that the defendant can be duly apprised of each statutory violation charged." Rule 1220-1-2-.09(1)(d)(emphasis added). The Petition's⁴

³ The TRA should summarily dismiss the "Petition to Intervene" filed by SECCA. In that Petition, SECCA seeks to "intervene as a matter of right in the above-captioned proceeding" As Rule 1220-4-2-.02(4) states, however, a tariff filing is not a contested case. Thus there is not "proceeding" in which SECCA can intervene.

⁴ In the remainder of this memo, BellSouth will refer to the "Petition of Southeastern Competitive Carriers Association" as the "Petition."

seven lines of allegations against the tariff simply do not comply with these requirements, and the Petition should therefore be dismissed.

Alternatively, if the Petition is not procedurally deficient, the TRA should still decline to convene a contested case to consider the Petition for all of the reasons set forth below.

A. SECCA's Claim that the Discount Program Tariff "Purports to be a Thirty-Day Promotional Tariff" is Without Merit.

SECCA's complaint that BellSouth's tariff "purports to be a thirty-day⁵ 'promotional' tariff, but, in fact, locks customers into contracts of eighteen-to-thirty-six months" is much ado about nothing. BellSouth did not file this offering as a promotion. Instead, it filed this offering as a tariff. This is demonstrated by the fact that: BellSouth filed the tariff thirty days before its effective date⁶ and not one day before its effective date;⁷ the cover letter accompanying the tariff clearly states that "[w]e request that this tariff be effective June 26, 2001;" and the heading at the top center of the offering reads "GENERAL SUBSCRIBER SERVICES TARIFF" and "PRIVATE LINE SERVICES TARIFF."

In addition to being puzzling and meritless, SECCA's suggestion that a "promotional tariff" cannot include term contracts is hypocritical. Several CLECs, including members of SECCA, have offered numerous promotions which have required customers to sign term contracts on or before a specific date in order to receive the benefits of the promotion. Many such promotions have contained termination liability provisions. Among the promotions these CLECS have offered customers in Tennessee are the following:

⁵ In its haste to attack this tariff, SECCA apparently overlooked the fact that the tariff allows qualifying business customers sign a contract under the program from June 22, 2001 to June 25, 2002. This is a twelve-month period, not a thirty-day period as erroneously alleged in SECCA's Petition.

⁶ See Rule 1220-4-1-.03 (requiring that tariffs containing changes in rates, rules, or regulations must be filed at least thirty days before the effective date of such changes).

⁷ See BellSouth's Tennessee General Subscribers Services Tariff A2.10.A.1 (allowing BellSouth to offer special promotions upon one day's notice to the TRA).

On December 23, 1996, MCImetro issued a "Local Services Investor Promotion – Memphis" that became effective January 22, 1997 and continued until January 26, 1997. Participating customers received, among other things, monthly credits ranging from \$50 to \$8,000. The amount of the monthly credit depended on the annual volume commitment the customer selected (ranging from \$6,000 to \$480,000 per year) and the term of service the customer selected (ranging from one-year term contracts to three-year term contracts). The promotion also included a range of termination liability provisions. MCImetro Tariff No. 2, §4.6.

On April 21, 1997, Time Warner issued a "Local Exchange Pricing" promotion that became effective May 14, 1997 and continued until November 14, 1997. Participating customers received hunting, touch tone, and "Facility Charge" free of charge and they paid monthly rates of \$33.50 for "Trunk Charge." These customers were entitled to "additional discounts" of 10%, 15%, and 20% if they signed term agreements of one year, two years, and three years respectively. Time Warner Tariff No. 2, §4.4.

On November 24, 1997, TCG Midsouth issued a "Thank You For Trying Us" Promotion that became effective December 24, 1997 and continued until March 1, 1998. Participating customers received "a credit equal to the first month facility charges" for specified services. Customers were required to choose "a minimum term commitment of one year," and "[i]f the Customer terminates service before the end of the commitment period, the Customer will be responsible for early termination charges equal to the facilities charge times the remaining months of the Customer's term commitment." TCG Midsouth Tariff No. 1, §5.8.3.

On November 24, 1997, TCG Midsouth issued a "Fall Into Savings Promotional Offering" that became effective December 24, 1997 and continued until March 1, 1998. Participating customers received "a credit equal to the installation charges" for specified services. Customers were required to choose "a minimum term commitment of one year," and "[i]f the Customer terminates service before the end of the commitment period, the Customer will be responsible for installation charges waived under this program. The customer will also be charged early termination charges equal to the facilities charge times the remaining months of the Customer's term commitment." TCG Midsouth Tariff No. 1, §5.8.4.

On December 17, 1997, MCImetro issued a "Local Conversion" Promotion that became effective January 16, 1998 and continued until January 31, 1998. Participating customers received credits of up to \$7,500 per location upon ordering specified services. Under this promotion, "[i]f the customer discontinues service prior to the twelfth month of service, they will be billed and required to pay the credits received from this promotion." MCImetro Tariff No. 2, §4.7.

On June 24, 1998, AT&T issued a "COMBO Promotion" that became effective July 1, 1998 and continued until September 30, 1998. Participating customers

received a \$750 credit "payable in the 4th full billing month after enrollment." These customers then had "12 consecutive billing months to achieve the \$8,000 usage commitment, per billed telephone number." AT&T Tariff §L4.2.

MCImetro ran an "Install Waiver Promotion" beginning November 12, 1998 and continuing until October 31, 1999. Participating customers received a waiver of installation charges for specified services. Additionally, "[t]o receive the benefits of this promotion, customers must commit, at the time of converting to MCImetro Local Service, to at least a one year term commitment," and "[c]ustomers who terminate their term plan prior to the expiration of the committed term will be charged for the waived installation charges." MCImetro Tariff No. 2, §4.11.

On February 12, 1999, AT&T issued a "'Welcome to AT&T Local Service' Promotional Program" that became effective the next day and continued until June 30, 1999. Participating customers received various credits for installation-related services, and "[i]f the customer terminates service before the end of the commitment period, the Customer will be responsible to pay any of the charges credited under this program." AT&T Tariff §L4.2.

On February 12, 1999, AT&T issued a "'PIC Change Charge' Promotional Program" that became effective the next day and continued until June 30, 1999. According to the terms of this promotion, qualifying new and existing customers received "a credit equal to the PIC Change Charge for each line or trunk that the customer switches to AT&T." Under this promotion, "[i]f the customer terminates service before the end of the commitment period, the Customer will be responsible to pay any of the charges credited under this program." AT&T Tariff §L4.2.

On February 16, 1999, ICG issued a "Digital Access Services Promotion" that became effective the same day and continued until May 1, 1999. Participating customers "who enter[ed] into a contract agreement for 'Plan A' service" received a discount off the "Central Office Port, Optional 1 monthly recurring charge." The amount of the discount was 45% to 55%, "depending upon the term of the contract agreement." ICG Tariff No. 1, §10.4.

On February 16, 1999, ICG issued an "Installation Credit Promotion" that became effective the same day and continued until August 16, 1999. Existing customers and new customers that switched their local exchange service to ICG from an ILEC received non-recurring installation credits "on a case by case basis" The terms also provided that "[a]rrangements for this promotion will be developed on a case by case basis (ICB) in response to the Company's need to meet competition and will be offered to the Customer in writing on a non-discriminatory basis." ICG Tariff No. 1, §10.5.

On February 24, 1999, AT&T issued a "Digital Link Flat Fee Calling Promotion" that became effective the next day and continued until April 30, 1999. Participating customers paid "a one-time DOD flat rate usage fee of \$4,960 per T1.5 facility for twelve months of DOD usage," and customers who

subscribed "to AT&T Digital Link's DOD Service only [paid] a one-time DOD flat rate usage fee of \$5,580.00 per T1.5 facility for twelve months of DOD usage" The terms also provided that "[n]o portion of the charge paid pursuant to this promotion will be refunded if the customer terminates AT&T Digital Link Service prior to the end of the twelve month period." AT&T Tariff §L4.2.

On June 3, 1999, MCImetro issued a "Lit Building Promotion" that became effective July 3, 1999 and continued until August 1, 1999. Participating customers were required to enroll in "at least a one-year, \$100 per month term/volume commitment" in order to receive specified discounts during specified months of the selected term. Customers apparently could choose a term commitment from one year to five years. MCImetro Tariff No. 2, §4.12.

On July 14, 1999, AT&T issued a "Digital Link 'PR' \$500.00 Bill Credit Promotion" that became effective the next day and continued until December 31, 1999. Participating customers received "a \$500 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment." These customers also agreed "to bill a minimum of \$600 in combined direct dial outbound IntraLATA usage, Short-Haul Dedicated IntraLATA usage and AT&T Digital Link usage, per participating BTN, during the 12-month period after enrollment in this promotion." AT&T Tariff §L4.2.

On July 14, 1999, AT&T issued a "Digital Link 'PR' \$750.00 Bill Credit Promotion" that became effective the next day and continued until December 31, 1999. Participating customers received "a \$750 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment." These customers also agreed "to bill a minimum of \$850 of combined IntraLATA and AT&T Digital Link usage, per BTN" and that they had 12 consecutive billing months to achieve the \$850.00 usage commitment, per BTN." AT&T Tariff §L4.2.

On September 15, 1999, NEXTLINK informed the TRA by letter of a promotion that it would run on a building-by-building basis in Nashville and Memphis for a period of 90 days in each building. Participating customers are entitled to one month, two months, and three months free service if they sign a term agreement of one year, two years, and three years respectively. Additionally, as a "**BONUS**," customers are urged to "sign up now and get your **Long Distance for 6¢ per minute**." (emphasis in original).

On January 5, 2000, AT&T issued a "Digital Link PR" Promotion that became effective the next day and continues until June 30, 2000. Participating customers received "a \$500 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment." Participating customers also agreed "to bill a minimum of \$600 in combined direct dial outbound IntraLATA usage, Short-Haul Dedicated IntraLATA usage and AT&T Digital Link usage, per participating BTN, during the 12-month period after enrollment in this promotion." AT&T Letter dated January 5, 2000.

Clearly, there is nothing improper or unusual about promotional tariffs that provide a limited time for customers to sign term contracts.

SECCA further complains that the tariff "locks customers into contracts of eighteen-to-thirty-six months." The TRA has considered similar arguments on many occasions, and in the "Regulations for the Provisioning of Tariff Term Plans and Special Contracts," the TRA developed a key -- in the form of limitations on termination charges -- to "unlock" a contract. Sections A13.90.6.A.6 and B7.11.4.A.6 of the tariff provides customers who take advantage of the Discount Program with that very key. SECCA's complaints about the term of the contracts contemplated by the tariff, therefore, are meritless.

Finally, the Discount Program tariff expressly provides that it is available for resale by CLECs. *See, e.g.*, Sections A13.90.6A.5 and B7.11.4.A.5. ("This program is available for resale for the duration of this enrollment period."). BellSouth has gone beyond simply making the Discount Program tariff available for resale. The proposed tariff provides that even after expiration of the one-year enrollment period, any contract established between BellSouth and its customer would continue to be available for resale for the remaining term of the contract. *See, e.g.*, A13.90.6A.5 and B7.11.4.A.5. ("Following the expiration of this enrollment period, no new customers may enroll in the Program, but any contract established under this Program between BellSouth and its customers would continue to be available for resale for the remaining term of the existing contract.").

B. BellSouth's Discount Program Tariff is Not Unduly Discriminatory.

SECCA further objects to the Discount Program tariff because "the tariff offers discounts in some wire centers but not in others." As demonstrated during the CSA Proceedings, however, Tennessee law does not prohibit a public utility from offering different rates to different customers -- it only prohibits a utility from offering different rates to similarly situated customers. In *Southern Ry. Co. v. Pentecost*, 330 S.W.2d 321, 325 (Tenn. 1969), for example,

the Tennessee Supreme Court held that a railroad did not engage in undue discrimination by charging some customers \$18 per car while charging a nearby customer \$33 per car. The Supreme Court explained that carriers

are only bound to give the same terms to all persons alike under the same conditions and circumstances, and *any fact that produces an inequality of condition and a change of circumstances justifies an inequality of charge.*

Id. (emphasis added).

BellSouth's Discount Program tariff provides the opportunity for substantial rate discounts for services, including hunting or grouping services, for qualifying business customers in specific wire centers. The list of eligible wire centers is set forth in the tariff and includes wire centers in Chattanooga, Cleveland, Clarksville, Collierville, Columbia, Dickson, Franklin, Gallatin, Gatlinburg, Goodlettsville, Hendersonville, Knoxville, Lebanon, Lenoir City, Maryville, Mascot, Memphis, Murfreesboro, Nashville, Oak Ridge, Sevierville, Smyrna, and Springfield. *See, e.g.,* A13.90.6A.2. These wire centers clearly are located in areas in which BellSouth's competitors have chosen to aggressively compete with BellSouth as opposed to areas in which BellSouth's competitors have shown little or no interest. BellSouth's Discount Program tariff, therefore, does not violate any statutory prohibition against unjust or unreasonable discrimination.

Moreover, like its attack on the term contracts in the tariff, SECCA's claim of discrimination is as hypocritical as it is meritless. As noted above in the introduction to this pleading and as further explained in Section I.C below, SECCA recently asked the TRA to approve a tariffed offering that was available only to customers located in specified wire centers. Having gotten what it asked for, SECCA cannot now come back, change its mind, and claim that what it asked for and received is somehow improper. *See Marcus v. Marcus*, 993 S.W.2d 596, 602 (Tenn. 1999) ("Under the doctrine of judicial estoppel 'a party will not be permitted to occupy inconsistent positions or to take a position in regard to a matter which is directly contrary

to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by this action.").

C. SECCA's Unsubstantiated "Belief" That "Similar Tariffs" Have Been Withdrawn, Suspended, or Investigated in Other States is Wrong.

The last "argument" SECCA makes in support of its Petition is that "it is SECCA's belief that similar tariffs have been withdrawn in Georgia, suspended in Alabama and are under investigation in Florida because of regulatory concerns." It is difficult to address such a vague, nebulous, and unsubstantiated "belief," and SECCA should not be allowed to use such vagaries to stall its competitors' efforts to provide more choices to Tennessee consumers. As explained below, however, it appears that in its haste to attack BellSouth's Discount Program tariff, SECCA has confused this tariffed offering (which is available to any qualifying business customer in the specified wire centers) with tariffed offerings that are available only to customers who have left BellSouth and are receiving services from another provider.

BellSouth, for example, is aware that SECCA itself has attacked BellSouth's Full Circle Promotion in Alabama. Although the Alabama Public Service Commission has established a procedural schedule and a hearing date to consider SECCA's attacks, it did not suspend or stay the tariff as SECCA requested it to do. *See* Report and Order in Docket 27989 (Attached as Exhibit "A"). More importantly, the Full Circle Promotion at issue in Alabama is not available to all customers in a given area, but instead it is available only to customers who have left BellSouth and are receiving service from another provider.

BellSouth is unaware of any tariff or promotion that resembles the Discount Program tariff being withdrawn in Georgia. BellSouth is aware of a complaint proceeding before the Florida Public Service Commission that involves, in part, allegations regarding BellSouth's

implementation of winback offerings.⁸ Again, winback offerings are available only to former customers of BellSouth who are receiving service from another provider. Thus the winback offerings that are the subject of the proceedings in Alabama and Florida are not "similar" to the Discount Program tariff.

In fact, SECCA's own actions in Docket No. 00-00391 prove that "winback" offerings not "similar" to the Discount Program tariff. In that docket, SECCA challenged a proposed tariffed service offering that was available only to former BellSouth customers. Following negotiations with BellSouth, however, SECCA and BellSouth jointly petitioned the TRA to approve a revised tariff that "remov[ed] the requirement that participating business customers currently have service with another local service provider and [made] this offering available to any business customers in the wire centers designated in the revised tariff" (See Attachment "B"). In sharp distinction to its adamant challenge to the winback service offering, SECCA petitioned the TRA to approve an offering that was available to all qualifying customers in designated wire centers.

SECCA again acknowledged that winback efforts are not similar to the type of offering in the Discount Program tariff in recent proceedings before the Public Service Commission of South Carolina. In his opening statement during the February 22, 2001 hearing on SECCA's challenge to a winback promotion, SECCA's attorney stated:

Now, I want to be very clear, the main thing I want to do by standing up here to begin with, is to make it very clear exactly what it is we're complaining about. The part of the promotion that we object to is BellSouth defining as eligible customers those customers who were customers of BellSouth but who have switched to a CLEC. That's what this Win Back – that's the key provision of a Win Back promotion is that the only customers that can take advantage of the Win Back promotion are customers that were BellSouth customers and have left to go be served by a CLEC

⁸ At this point in the Florida proceedings, the complaining party has filed its Complaint and BellSouth has filed its response. No further proceedings have taken place to date.

* * *

That is what we object to, BellSouth being permitted to classify customers in that way. We are not attacking the overall concept of BellSouth attempting to win back its customers. Absolutely, BellSouth is entitled to go after its former customers and to compete for them to try to get them to come back.

See Transcript of February 22, 2000 Hearing before the Public Service Commission of South Carolina in Docket No. 2000-378-C at 8-10 (emphasis added)(copy attached as Exhibit "C").

Later in the same hearing, SECCA's attorney had the following exchange with BellSouth's witness:

Q. And you understand that the entities that are complaining, who brought this Complaint, would withdraw the Complaint if BellSouth would file a promotion with the term requirements and volume discounts, would file that as a tariff offering and then go out and market it to former BellSouth customers that are now customers of CLECs? Do you understand that that's out position?

A. Would you repeat that for me, please?

Q. I'll be glad to. If BellSouth were to file a tariff offering that had the same discounts that are in your Win Back promotion and the same term limitations, you know, one year, two year, three year, had those limitations in it, if BellSouth were to file that as a tariff provision or as a promotion, and to remove the restriction that it is only available to former BellSouth customers who switched to a CLEC, that the Complainants would withdraw their objection?

Id. at 115 (emphasis added) (copy attached as Exhibit "D"). It is both disingenuous and impermissible for the same party that made these assertions in a contested case proceeding just three months ago to now claim that winback efforts are "similar" to the Discount Program tariff.

II. THE INTERESTS OF JUSTICE WOULD NOT BE SERVED IF SECCA'S MERITLESS PETITION WERE GRANTED.

The market in which SECCA's members have chosen to compete in Tennessee is highly competitive. While BellSouth's competitors currently may place their offerings on the market on one day's notice, BellSouth is disadvantaged by having to wait 30 days to place its similar offerings on the market. Allowing SECCA to further insulate its customers from BellSouth's


competitive offerings on the basis of meritless allegations would prejudice not only BellSouth, but also Tennessee business customers who should be allowed to consider as many competitive alternatives as quickly as possible.

CONCLUSION

For the reasons stated above, the Authority should deny SECCA's Petition and should approve BellSouth's tariff effective June 26, 2001.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.


Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

Patrick W. Turner
675 West Peachtree Street NE, Suite 4300
Atlanta, Georgia 30375
(404) 335-0761

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2001, a copy of the foregoing document was served on the parties of record as indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Ave., #1600
Post Office Box 198062
Nashville, TN 37219-8062


A handwritten signature in cursive script, appearing to read "Jill C. Philby", written over a horizontal line.

EXHIBIT "A"



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

JIM SULLIVAN, PRESIDENT
JAN COOK, ASSOCIATE COMMISSIONER
GEORGE C. WALLACE, JR. ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.
SECRETARY

**BELLSOUTH
TELECOMMUNICATIONS, INC**

IN RE: BellSouth Full Circle Promotion

DOCKET 27989

GENERIC PROCEEDING

IN RE: Telephone Rules Governing Promotions

DOCKET 15957

REPORT AND ORDER

BY THE COMMISSION:

On December 18, 2000, BellSouth filed with the Commission its Full Circle promotion with an effective date of January 15, 2001. The promotion is targeted at former BellSouth business customers and provides discounts of up to 20% of the customer's total monthly recurring charges if the customer agrees to a contract with BellSouth for periods of up to 36 months. The Southeastern Competitive Carriers Association (SECCA) by petition dated January 31, 2001, requested it be granted leave to intervene and that BellSouth's Full Circle Promotion be stayed pending a hearing on this matter. The staff does not concur with the request for stay of the promotion because it is currently in effect and there is no finding that the promotion conflicts with Commission Rules. Consequently, the staff recommends that a hearing on BellSouth's Full Circle promotion be established.

By Petition dated February 21, 2001, SECCA further requested that the proceeding be expanded to include a general review, by the Commission, of the definition and use of promotions in Alabama by telecommunications providers for purposes of establishing rules governing such promotions. The staff agrees that a review of the Commission Rules concerning promotions is appropriate and recommends that a generic proceeding for that purpose be combined in a joint hearing and record with the proceeding for BellSouth's Full Circle promotion.

The Commission concurs with the staff's recommendation that a hearing be established on the merits of BellSouth's Full Circle Promotion. The Commission further concurs with staff's recommendation that a generic proceeding be established to consider the promulgation of

Telephone Rules governing promotions and that both proceedings be held in a joint hearing with a joint record.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, that a hearing be established to consider the merits of BellSouth's Full Circle promotion.

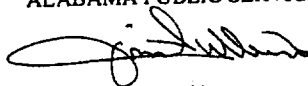
IT IS FURTHER ORDERED BY THE COMMISSION, that a generic proceeding be established to consider the promulgation of Telephone Rules governing promotions.

IT IS FURTHER ORDERED BY THE COMMISSION, that both proceedings be conducted under a joint hearing and a joint record.

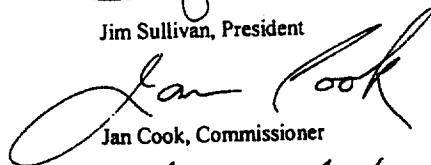
IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

Done at Montgomery, Alabama, this 2nd day of April 2001.

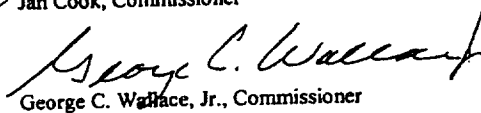
ALABAMA PUBLIC SERVICE COMMISSION



Jim Sullivan, President



Jan Cook, Commissioner



George C. Wallace, Jr., Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary

EXHIBIT "B"

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

REC'D TN
REGULATORY AUTH.
*00 JUN 14 PM 3 00
OFFICE OF THE
EXECUTIVE SECRETARY

In Re: *BellSouth "Win Back" Tariff*
Docket No. 00-00391

JOINT PETITION FOR APPROVAL OF
REVISED TARIFF EMBODYING SETTLEMENT AGREEMENT

BellSouth Telecommunications, Inc., NEXTLINK Tennessee Inc., Southeastern Competitive Carriers Association, Time Warner Telecom of the Mid-South, L.P. and New South Communications Corporation,¹ jointly petition the Tennessee Regulatory Authority ("TRA") to approve the attached revised tariff that BellSouth has contemporaneously filed with the TRA today.

This revised tariff embodies the settlement agreement reached by the parties by:

1. Removing the requirement that participating business customers currently have service with another local service provider and making this offering available to any business customers in the wire centers designated in the revised tariff; and
2. Modifying the termination liability provisions in the original tariff to make them explicitly consistent with the terms of the proposed settlement agreement submitted to the TRA for approval in Docket No. 00-00170 (*Petition to Require BellSouth Telecommunications, Inc. to Appear and Show Cause that Certain Sections of its General Subscriber Services Tariff and Private Line Services Tariff Do Not Violate Current State and Federal Law*).

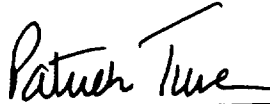
¹ No other persons or entities have intervened in this docket.

All parties to this docket request the TRA to place the attached revised Tariff on the Agenda for the Director's June 20, 2000 Conference and to approve the Tariff during that Conference. All Intervenors agree to withdraw from this docket upon such approval.

Finally, all parties have agreed to hold all discovery and other filings in abeyance pending the TRA's consideration and approval of the attached revised Tariff.

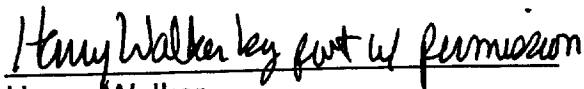
Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



Guy M. Hicks
Patrick W. Turner
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

BOULT, CUMMINGS, CONNER & BERRY



Henry Walker
414 Union Ave., #1600
P. O. Box 198062
Nashville, TN 39219-8062
(615) 252-2363
Counsel for NEXTLINK and SECCA

FARRIS, MATHEWS, BRANAN, BOBANGO &
HELLEN

Charles Welch by pow w/ permission

Charles B. Welch
618 Church Street, #300
Nashville, TN 37219
(615/)726-1200
Counsel for Time Warner and New South

216439



BellSouth Telecommunications, Inc.
Room 22B22
333 Commerce Street
Nashville, Tennessee 37201-3300

615-214-3815
Fax 615 214-8867

Jim Gotto
Manager
Regulatory

June 14, 2000

Ms. Darlene Standley
Regulatory Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee

Dear Darlene:

SUBJECT: Tariff Filing for Welcome Back! Win Back Program Docket No 00-00391

These revised tariff pages replace, in their entirety, the tariff pages filed May 16, 2000.

General Subscriber Services Tariff A
Section A13 - Contents Fifth Revised Page 6
First Revised Page 68.1
Original Page 68.2
Second Revised Page 69

Private Line Services Tariff
Subject Index - Third Revised Page 2
Section B7 - Contents Fifth Revised Page 2
First Revised Page 54
Original Page 55

This filing is being revised to comply with the settlement agreement reached among BellSouth, Nextlink, SECCA, Time Warner, and New South that is being filed concurrent with this filing. The revisions include changing the offering name to Competitive Response Program and extending the availability to any business customer that meet the revenue criteria in specified wire centers.

June 14, 2000

Page 2

We appreciate your returning a receipted copy as evidence of this substitution. Please call me at 214-3815 if you have questions or wish to discuss.

Yours truly,



Attachments

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

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EFFECTIVE: June 20, 2000

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.54 Business Programs (Cont'd)

A13.54.1 Business Discount Program (Cont'd)

B. Discount Schedule (Cont'd)

2. If a Program participant purchases new services during the 60-day enrollment period, line connection charges will be waived for those services ordered.
3. A bonus 5 percent discount in addition to the base discounts will apply to non-recurring and monthly recurring charges for BellSouth® Primary Rate ISDN Service. This includes existing services and those ordered by a Program participant during the 60-day enrollment period.
4. For each month during which a contract which is signed under this Program is in effect, the customer will receive the discount associated with the customer's total billed revenue at a given location as defined in A.1.; 2.; 3.; and 4., preceding for that particular month.
5. If a Program participant's monthly revenue at a given location in a given month falls below the minimum revenue per month or above the maximum revenue per month, discounts will not be applied at that location for that month.
6. The applied discounts will appear as a credit in the Other Charges and Credits (OC&C) section of the Program Participant's bill.

A13.54.2 Competitive Response Program

A. Rules and Regulations

Beginning June 15, 2000, continuing until September 13, 2000, qualifying customers may enroll in this Program, which provides discounts on their billed BellSouth revenue as described below, by signing a one-year, two-year, or three-year term contract.

1. This Program is available to business customers in the designated wire centers (listed in bold) of the following Exchanges: Chattanooga - Brainerd, Dodds, Ninth St; Franklin - Cool Springs, Main; Knoxville - Bearden, Fountain City, Main, West Hills; Memphis - Bartlett, Chickasaw, Eastland, Germantown, Main, Midtown, Oakville, Southland, Southside; Nashville - Airport, Brentwood, Burton Hills, Crieve Hall, Donelson, Inglewood, Madison, Main, Sharondale, University, West Meade; and Oak Ridge - Main. In addition, customers must have total monthly billed BellSouth revenue at Tennessee locations (excluding charges identified in 4. following) between \$70 and \$10,000. Services for a Program participant that has monthly revenue outside this range are not eligible for this discount.
2. Qualifying Program participants must sign a term contract of one, two, or three years to receive the discounts that are detailed in B. following, Discount Schedule.
3. Discounts will be applied to billing for services in the General Subscriber Services Tariff and the Private Line Services Tariff.
4. Discounts are based on end-user monthly total billed BellSouth revenue at Tennessee locations excluding: Unregulated charges, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party relay services), and charges for services provided by other companies.
5. To participate in this Program, qualifying customers must sign a one, two, or three-year term contract between June 15 and September 13, 2000. Following this period, no subscribers may enroll in this Program. This Program is available for resale for the duration of this enrollment period. Following the expiration of this enrollment period, no new customers may enroll in the Program, but any contract established under this Program between BellSouth and its customers would continue to be available for resale for the remaining term of the existing contract. Aside from these resale situations, a customer may not assign its rights under any contract signed pursuant to this Program to another customer or to any other third party.
6. Should a participating customer terminate a contract signed under this Program without cause, charges for termination or cancellation of service shall not exceed the lesser of: (a) the repayment of discounts received during the previous 12 months of the service; or (b) 6% of the total tariffed service agreement amount. In addition to the reimbursement of the discounts, tariffed termination liability charges for individual services will be applied, if applicable.
7. The customer may renew the contract for another term under the same terms and conditions by providing BellSouth written notice of their intent to do so, thirty days in advance of the expiration of the initial term of the contract.
8. Customers with volume and term Contract Service Arrangements (CSAs) are not eligible for this Program.

EFFECTIVE: June 20, 2000

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.54 Business Programs (Cont'd)

A13.54.2 Competitive Response Program (Cont'd)

A. Rules and Regulations (Cont'd)

9. Customers may not participate concurrently in any previous or current Key Customer Promotions, Business Discount Program or Hunting Promotion and/or any future versions of those programs.
10. Customers that have changed locations since having their service with BellSouth are not eligible to participate in this Program and are considered new customers.
11. Customers with total billed BellSouth revenue at Tennessee locations as defined in 1., 2., 3. and 4. preceding that exceeds \$150,000 annually are not eligible to participate in this Program even if some or all of their accounts meet the revenue criteria.

B. Discount Schedule

1. Discounts applicable to the subscribers' total billed BellSouth revenue at Tennessee locations as defined in A.1., 2., 3. and 4., preceding are as follows:

Monthly Total Billed Revenue	12 Month Term	24 Month Term	36 Month Term
\$5,500 - \$10,000	16%	17%	18%
\$3,000 - \$4,499.99	14%	15%	16%
\$1,500 - \$2,999.99	12%	13%	14%
\$500.00 - \$1,499.99	10%	11%	12%
\$70.00 - \$499.99	8%	9%	10%

2. If a Program participant purchases additional services during the 90-day enrollment period, line connection charges will be waived for those services ordered.
3. For each month during which a contract which is signed under this Program is in effect, the customer will receive the discount associated with the customer's total billed BellSouth revenue at Tennessee locations as defined in A.1., 2., 3. and 4., preceding for that particular month.
4. If a Program participant's total billed BellSouth revenue at Tennessee locations as defined in A.1., 2., 3. and 4. preceding for a given month falls below the minimum revenue per month, discounts will not be applied for that customer.
5. The applied discounts will appear as a credit in the Other Charges and Credits (OC&C) section of the Program Participant's bill.

A13.55 Reserved For Future Use

A13.56 Hot Line Service

This service receives promotional pricing treatment as described in A2.3.26 of this Tariff.

A13.56.1 General

- A. Hot Line Service is an automatic dialing feature which provides the customer with the ability to automatically be connected with another line in the circuit switched network. When the customer's telephone instrument goes off-hook, a switched connection is set-up without any further action.
- B. Hot Line Service may be used only in connection with individual line service.
- C. Hot Line Service is furnished only from central offices which have been arranged to provide this service and is provided subject to the availability of facilities.

A13.56.2 Rates and Charges

A. Hot Line Service

The rates and charges for this service are in addition to normal service and monthly charges for individual line service found in Sections A3. and A4. of this Tariff, respectively.

1. Per Line Equipped

	Nonrecurring Charge	Monthly Rate	USOC
(a) Residence	\$2.00	\$.50	HLS
(b) Business	2.00	.50	HLS

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.57 Warm Line Service

This service receives promotional pricing treatment as described in A2.3.26 of this Tariff.

(M)

(M)

(M)

(M)

(M)

(M)

A13.57.1 General

- A. Warm Line Service provides a customer who has basic exchange line service with a time delayed automatic dialing capability. If the customer with this service goes off-hook and initiates dialing within the time delay period, the call will proceed normally as dialed. If dialing does not commence within the time delay period (0-20 seconds), a preprogrammed telephone number is automatically dialed. The preprogrammed telephone number and time-delay period are selected by the customer at the time service is established and can be changed only via service order.
- B. Warm Line Service may be used only in connection with individual line service.
- C. Warm Line Service is furnished only from central offices which have been arranged to provide this service and is provided subject to the availability of facilities.

A13.57.2 Rates and Charges

A. Warm Line Service

The rates and charges for this service are in addition to normal service and monthly charges for individual line service found in Sections A3. and A4. of this Tariff, respectively.

1. Per Line Equipped

	Nonrecurring Charge	Monthly Rate	USOC
(a) Residence	\$25.00	\$.50	WLS
(b) Business	25.00	.50	WLS

A13.58 Uniform Access Number (UAN)

A13.58.1 Description of Service

- A. Uniform Access Number (UAN) is an optional service which provides the customer with a uniform Business Line Telephone Number for client access to the customer's service. The client will be able to dial one number from all locations within the specified area and the call can be routed to a specified customer location. UAN will be provided under the following terms and conditions.
 1. A UAN telephone number may not be accessed by 0+ or 1+ toll calls. Also, no operator assisted calls will be permitted to be placed to a UAN, nor will third party or collect toll calls be permitted to be billed to UANs.
 2. The assigned telephone number will have a dedicated NXX.
 3. UAN can be delivered through a line-side connection or a trunk-side connection as specified in A3.28 of this Tariff but not simultaneously for the same dedicated NXX number. A trunk-side connection is required if UAN is used with Automatic Number Identification (ANI).
 4. Line side connections are made through regular exchange access lines (by individual business lines, PBX trunks, etc.). Trunk side connections are made via a Trunk Side Access Facility.
 5. Nonrecurring charges apply for each UAN per Traffic Operator Position System (TOPS) Tandem office. Where more than one UAN is established at the same TOPS Tandem location for the same customer and the UANs are ordered and installed at the same time the first nonrecurring charge rate element applies to the first UAN. Each additional UAN number will be billed at the additional service installed rate. The same nonrecurring charges and application apply per TOPS Tandem for UAN number changes requested by the customer subsequent to the original UAN assignment.
 6. Number changes required for Company reasons will not incur the Service Establishment Charge.
 7. A customer may reserve UANs to meet his specified growth requirements at specified locations. In the event the customer elects not to be provided with reserved UANs, assignment of these UANs cannot be assured.
 8. This service includes preassigned UANs. Such telephone numbers will be removed from reserved status and assigned as active UANs as requested by the customer.
 9. The assignment of UANs is made at the discretion of the Company. Special numbers are furnished subject to the availability of numbers.

BELLSOUTH
TELECOMMUNICATIONS, INC.
TENNESSEE
ISSUED: May 16, 2000
BY: President - Tennessee
Nashville, Tennessee

PRIVATE LINE SERVICES TARIFF

Third Revised Page 2
Cancels Second Revised Page 2

EFFECTIVE: June 20, 2000

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Billing of Private Line Service Provided by Multiple Companies		B2.
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(N)

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B7. DIGITAL NETWORK SERVICE

B7.11 Business Programs (Cont'd)

B7.11.1 Business Discount Program (Cont'd)

B. Discount Schedule (Cont'd)

2. If a Program participant purchases new services during the 60-day enrollment period, line connection charges will be waived for those services ordered.
3. A bonus 5 percent discount in addition to the base discounts will apply to non-recurring and monthly recurring charges for BellSouth® Primary Rate ISDN Service. This includes existing services and those ordered by a Program participant during the 60-day enrollment period.
4. For each month during which a contract which is signed under this Program is in effect, the customer will receive the discount associated with the customer's total billed revenue at a given location as defined in A.1.; 2.; 3.; and 4., preceding for that particular month.
5. If a Program participant's monthly revenue at a given location in a given month falls below the minimum revenue per month or above the maximum revenue per month, discounts will not be applied at that location for that month.
6. The applied discounts will appear as a credit in the Other Charges and Credit (OC&C) section of the Program Participant's bill.

B7.11.2 Competitive Response Program

A. Rules and Regulations

Beginning June 15, 2000, continuing until September 13, 2000, qualifying customers may enroll in this Program, which provides discounts on their billed BellSouth revenue as described below, by signing a one-year, two-year, or three-year term contract.

1. This Program is available to business customers in the designated wire centers (listed in bold) of the following Exchanges: Chattanooga - Brainerd, Dodds, Ninth St; Franklin - Cool Springs, Main; Knoxville - Bearden, Fountain City, Main, West Hills; Memphis - Bartlett, Chickasaw, Eastland, Germantown, Main, Midtown, Oakville, Southland, Southside; Nashville - Airport, Brentwood, Burton Hills, Crieve Hall, Donelson, Inglewood, Madison, Main, Sharondale, University, West Meade; and Oak Ridge - Main. In addition, customers must have total monthly billed BellSouth revenue at Tennessee locations (excluding charges identified in 4. following) between \$70 and \$10,000. Services for a Program participant that has monthly revenue outside this range are not eligible for this discount. (N)
2. Qualifying Program participants must sign a term contract of one, two, or three years to receive the discounts that are detailed in B. following, Discount Schedule. (N)
3. Discounts will be applied to billing for services in the General Subscriber Services Tariff and the Private Line Services Tariff. (N)
4. Discounts are based on end-user monthly total billed BellSouth revenue at Tennessee locations excluding: Unregulated charges, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party relay services), and charges for services provided by other companies. (N)
5. To participate in this Program, qualifying customers must sign a one, two, or three-year term contract between June 15 and September 13, 2000. Following this period, no subscribers may enroll in this Program. This Program is available for resale for the duration of this enrollment period. Following the expiration of this enrollment period, no new customers may enroll in the Program, but any contract established under this Program between BellSouth and its customers would continue to be available for resale for the remaining term of the existing contract. Aside from these resale situations, a customer may not assign its rights under any contract signed pursuant to this Program to another customer or to any other third party. (N)
6. Should a participating customer terminate a contract signed under this Program without cause, charges for termination or cancellation of service shall not exceed the lesser of: (a) the repayment of discounts received during the previous 12 months of the service; or (b) 6% of the total tariffed service agreement amount. In addition to the reimbursement of the discounts, tariffed termination liability charges for individual services will be applied, if applicable. (N)
7. The customer may renew the contract for another term under the same terms and conditions by providing BellSouth written notice of their intent to do so, thirty days in advance of the expiration of the initial term of the contract. (N)
8. Customers with volume and term Contract Service Arrangements (CSAs) are not eligible for this Program. (N)
9. Customers may not participate concurrently in any previous or current Key Customer Promotions, Business Discount Program, or Hunting Promotion and/or any future versions of those programs. (N)
10. Customers that have changed locations since having their service with BellSouth are not eligible to participate in this Program and are considered new customers. (N)

EFFECTIVE: June 20, 2000

B7. DIGITAL NETWORK SERVICE

B7.11 Business Programs (Cont'd)

B7.11.2 Competitive Response Program (Cont'd)

A. Rules and Regulations (Cont'd)

11. Customers with total billed BellSouth revenue at Tennessee locations as defined in 1., 2., 3. and 4. preceding that exceeds \$150,000 annually are not eligible to participate in this Program even if some or all of their accounts meet the revenue criteria. (N)

B. Discount Schedule

1. Discounts applicable to the subscribers' total billed BellSouth revenue at Tennessee locations as defined in A.1., 2., 3. and 4., preceding are as follows: (N)

Monthly Total Billed Revenue	12 Month Term	24 Month Term	36 Month Term
\$5,500 - \$10,000	16%	17%	18%
\$3,000 - \$4,499.99	14%	15%	16%
\$1,500 - \$2,999.99	12%	13%	14%
\$500.00 - \$1,499.99	10%	11%	12%
\$70.00 - \$499.99	8%	9%	10%

2. If a Program participant purchases additional services during the 90-day enrollment period, line connection charges will be waived for those services ordered. (N)
3. For each month during which a contract which is signed under this Program is in effect, the customer will receive the discount associated with the customer's total billed BellSouth revenue at Tennessee locations as defined in A.1., 2., 3. and 4., preceding for that particular month. (N)
4. If a Program participant's total billed BellSouth revenue at Tennessee locations as defined in A.1., 2., 3. and 4. preceding for a given month falls below the minimum revenue per month, discounts will not be applied for that customer. (N)
5. The applied discounts will appear as a credit in the Other Charges and Credits (OC&C) section of the Program Participant's bill. (N)

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Julie Woodruff, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0500

☐ Hand
☒ Mail
☒ Facsimile
☐ Overnight

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
414 Union Avenue, #1600
Post Office Box 198062
Nashville, Tennessee 37219-8062

☐ Hand
☒ Mail
☒ Facsimile
☐ Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church Street, #303
Nashville, Tennessee 37219



EXHIBIT "C"

1 BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
2
3 COLUMBIA, SOUTH CAROLINA
4

5
6
7 HEARING #1023144

FEBRUARY 22, 2000

10:30 A.M.
8
9

10 DOCKET NO. 2000-378-C: SOUTHEASTERN COMPETITIVE CARRIERS
11 ASSOCIATION, NEWSOUTH COMMUNICATIONS CORPORATION AND
12 TRIVERGENT COMMUNICATIONS, *Complainants/Petitioners* vs. BELLSOUTH
13 TELECOMMUNICATIONS, INC., *Respondent*.
14
15

16 HEARING BEFORE: Chairman William "Bill" Saunders, Presiding; Vice Chairman H.
17 Clay Carruth, Jr.; Commissioners Randy Mitchell, Philip T. Bradley, Mignon L. Clyburn, C.
18 Robert Moseley, and James Blake Atkins, Ph.D.
19 Counsel to Commission: Jocelyn G. Boyd, Esq..
20
21

22 STAFF: D. Wayne Burdett, Manager, and James M. McDaniel, Chief of
23 Telecommunications; Joseph W. Rogers, David S. Lacoste, Colanthia B. Alvarez, and
24 Robert W. Burgess, Utilities Department; James W. Spearman, Research Department; F.
25 David Butler, Esq., General Counsel; and MaryJane Cooper, Hearing Reporter.
26
27

28 APPEARANCES: Frank R. Ellerbe, III, Esq., and John J. Pringle, Jr., Esq.,
29 representing SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION,
30 NEWSOUTH COMMUNICATIONS CORPORATION AND TRIVERGENT
31 COMMUNICATIONS, *Complainants/Petitioners*.
32

33 Caroline N. Watson, Esq., William F. Austin, Esq., Patrick
34 Turner, Esq., representing BELLSOUTH TELECOMMUNICATIONS, *Respondents*.
35
36
37
38
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42 TRANSCRIPT OF TESTIMONY AND PROCEEDINGS
43 VOLUME 1 OF 1
44

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1 CHAIRMAN SAUNDERS: Please be seated.
2 We will call this proceeding to order.
3 Mr. McDaniel, would you please read
4 the docket?
5 MR. MCDANIEL: Yes, sir, Mr. Chairman.
6 Mr. Chairman, Members of the
7 Commission, this matter comes before the
8 Commission under Docket No. 2000-378-C.
9 The Complainant, the Southeastern
10 Competitive Carriers Association, Newsouth
11 Communications Corporation, and Trivergent
12 Communications, against BellSouth
13 Telecommunications, Inc. The Southeastern
14 Competitive Carriers Association, Newsouth
15 and Trivergent filed a Complaint concerning
16 two promotions filed by BellSouth
17 Telecommunications. According to the
18 Complainant, BellSouth's Welcome Back/Win
19 Back promotion and the Win Back
20 Installation Waiver promotion targeted
21 businesses served by the competitive local
22 exchange carriers. The Plaintiffs allege
23 that BellSouth Telecommunications is
24 abusing its market position through the Win

1 Back promotions.

2 In response, BellSouth filed a Motion
3 to Dismiss the Complaint and denied the Win
4 Back promotions are an abuse of market
5 position. BellSouth states the promotions
6 are an effort by BellSouth to compete in
7 the market.

8 After consideration of the Motion to
9 Dismiss, the Commission denied BellSouth's
10 Motion and found that the Complaint should
11 be set for hearing.

12 Please take notice that the hearing on
13 this matter has been scheduled to begin at
14 10:30 a.m. on Thursday, February 22, 2001,
15 before the Commission in the Commission's
16 Hearing Room at 101 Executive Center Drive,
17 Columbia, South Carolina.

18 Mr. Chairman, the Docket is in order.

19 CHAIRMAN SAUNDERS: Thank you, Mr.
20 McDaniel.

21 Who represents the Petitioners?

22 MR. ELLERBE: Mr. Chairman, my name is
23 Frank Ellerbe. I'm representing the
24 Southeastern Competitive Carriers

1 Association and Newsouth Communications
2 Corporation this morning.

3 MR. PRINGLE: Good morning, Mr.
4 Chairman, Members of the Commission. My
5 name is Jack Pringle of the Beach Law Firm,
6 and I'll be representing Trivergent
7 Communications today.

8 CHAIRMAN SAUNDERS: Who represents the
9 Respondent?

10 MS. WATSON: Good morning, Mr.
11 Chairman, Members of the Commission. My
12 name is Caroline Watson. I'll be
13 representing BellSouth this morning. Along
14 with me will be William F. Austin. Also,
15 Patrick Turner. Mr. Turner is from
16 Georgia. He is licensed to practice here
17 and has appeared before this Commission
18 before, so we would ask that he be allowed
19 to participate in this proceeding. Thank
20 you.

21 CHAIRMAN SAUNDERS: All right. Who
22 represents the Commission Staff?

23 MR. BUTLER: Mr. Chairman, Members of
24 the Commission, I'm David Butler, General

1 Counsel, and I represent the Staff in the
2 proceeding this morning.

3 CHAIRMAN SAUNDERS: Anybody got an
4 opening statement?

5 MR. ELLERBE: Thank you, Mr. Chairman.

6 **OPENING STATEMENTS:**

7 **By Mr. Ellerbe:**

8 [MR. ELLERBE] I think it's particularly important for me to
9 lay a little ground work before we begin making our
10 presentation, and it will be very brief. But, this is the
11 first case that I'm aware of that this Commission has
12 considered under §576(b)(5). This Commission has heard a lot
13 about §576 and may be hearing a lot more about it. Section
14 576 is the provision of the state law under which BellSouth
15 is now regulated, loosely regulated, and provision, §(b)(5)
16 provides that - requires that LECs set rates for services on
17 a basis that does not unreasonably discriminate between
18 similarly situated customers ;and it also provides, requires
19 this Commission to establish a complaint process for claims,
20 for complaints, that a local exchange company is engaged in
21 in an abuse of market position. And this Commission had
22 guidelines, had a proceeding to establish guidelines on this
23 thing, and has issued an Order in that proceeding. This is
24 the first substantive case that I'm aware of that's been

1 brought and that the Commission has heard under that
2 provision.

3 And we are making two arguments, and we are arguing that
4 the promotion at issue in this case, which is a Win Back/
5 Welcome Back promotion, is an **unreasonable discrimination**, is
6 an improper, inappropriate discrimination by BellSouth
7 **between similarly situated customers** and that y'all shouldn't
8 allow them to do it. We also believe that BellSouth is
9 **abusing its market position in a way that hurts competition**
10 if they're permitted to engage in this type of promotion.

11 Now, I want to be very clear, the main thing I want to
12 do by standing up here to begin with, is to make it very
13 clear exactly what it is we're complaining about. The part
14 of the promotion that we object to is BellSouth defining as
15 **eligible customers** those customers who were customers of
16 BellSouth but who have switched to a CLEC. That's what this
17 Win Back - that's the key provision of a Win Back promotion
18 is that the only customers that can take advantage of the Win
19 Back promotion are customers that were BellSouth customers
20 and have left to go be served by a CLEC, which means that you
21 could have two customers whose usage, his volume, his
22 willingness to make a term commitment is exactly the same.
23 They are customers that traditionally would be understood to
24 be similarly situated; but now, if this type of promotion is

1 permitted, they will no longer be considered to be similarly
2 situated and one will be able to get a substantial discount
3 and the other will not, depending on whether they've left
4 BellSouth and gone with a competitor.

5 We think that's a big distinction, it's something that
6 you have never permitted before, and it's a type of
7 discrimination that you have not permitted in the past. It
8 is not a traditional type of discrimination. That is what we
9 object to, BellSouth being permitted to classify customers in
10 that way. We are not attacking the overall concept of
11 BellSouth attempting to win back its customers. Absolutely,
12 BellSouth is entitled to go after its former customers and to
13 compete for them to try to get them to come back. And the
14 traditional way, when Win Back programs were invented by AT&T
15 when it began to lose market shares in the long distance
16 business, and the way they did it was, they would file
17 special rates that had attractive pricing and then they would
18 go out in the marketplace and make calls to their former
19 customers and say, "Come back to us and we'll give you a good
20 deal." BellSouth can do that. They can file a program that
21 has volume - if customers make volume and term commitments,
22 they can get discounts. If they file that program and then
23 go to begin making phone calls just as they want to do under
24 this Win Back program, then we have no objection. Our

1 objection is the way they've done it, the only customers that
2 can take advantage of those discounts are customers who have
3 switched to a CLEC. We don't believe BellSouth should be
4 allowed to do that. We believe that that is unreasonable
5 discrimination, it hurts competition and it's an abuse of
6 their market position. That's what we'll be arguing in this
7 proceeding today.

8 Thank you, Mr. Chairman.

9 CHAIRMAN SAUNDERS: Any comments from
10 any others?

11 MS. WATSON: Yes, Mr. Chairman. We
12 would like to provide a brief opening as
13 well, and Mr. Turner will make our opening
14 statement. Thank you.

15 MR. TURNER: Thank you Mr. Chairman,
16 Commissioners.

17 By Mr. Turner:

18 [MR. TURNER] My name is Patrick Turner, I represent
19 BellSouth. Today we're going to show you BellSouth in the
20 market, the customers that are subject to this promotion,
21 BellSouth has lost approximately 25% of those customers to
22 competition. These are not the customers that are in the
23 rural areas where no one has chosen to compete yet and have
24 no choice yet, due to the actions of others of who their

EXHIBIT "D"

1 BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
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3 COLUMBIA, SOUTH CAROLINA
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7 HEARING #1023144

FEBRUARY 22, 2000

10:30 A.M.

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10 DOCKET NO. 2000-378-C: SOUTHEASTERN COMPETITIVE CARRIERS
11 ASSOCIATION, NEWSOUTH COMMUNICATIONS CORPORATION AND
12 TRIVERGENT COMMUNICATIONS, *Complainants/Petitioners* vs. BELLSOUTH
13 TELECOMMUNICATIONS, INC., *Respondent*.
14

15
16 HEARING BEFORE: Chairman William "Bill" Saunders, Presiding; Vice Chairman H.
17 Clay Carruth, Jr.; Commissioners Randy Mitchell, Philip T. Bradley, Mignon L. Clyburn, C.
18 Robert Moseley, and James Blake Atkins, Ph.D.
19 Counsel to Commission: Jocelyn G. Boyd, Esq..
20

21
22 STAFF: D. Wayne Burdett, Manager, and James M. McDaniel, Chief of
23 Telecommunications; Joseph W. Rogers, David S. Lacoste, Colanthia B. Alvarez, and
24 Robert W. Burgess, Utilities Department; James W. Spearman, Research Department; F.
25 David Butler, Esq., General Counsel; and MaryJane Cooper, Hearing Reporter.
26

27
28 APPEARANCES: Frank R. Ellerbe, III, Esq., and John J. Pringle, Jr., Esq.,
29 representing SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION,
30 NEWSOUTH COMMUNICATIONS CORPORATION AND TRIVERGENT
31 COMMUNICATIONS, *Complainants/Petitioners*.

32 Caroline N. Watson, Esq., William F. Austin, Esq., Patrick
33 Turner, Esq., representing BELLSOUTH TELECOMMUNICATIONS, *Respondents*.
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43 VOLUME 1 OF 1
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1 Q Okay, so presumably if she has a different view, she'll
2 tell us in a few minutes, is that fair enough?

3 A She would answer your question, yes.

4 Q Did you hear my discussion and description of our
5 position when we began - the opening statement that I
6 made?

7 A Yes, I did.

8 Q And you understand that the entities that are com-
9 plaining, who brought this Complaint, would withdraw the
10 Complaint if BellSouth would file a promotion with the
11 term requirements and volume discounts, would file that
12 as a tariff offering and then go out and market it to
13 former BellSouth customers that are now customers of
14 CLECs? Do you understand that that's our position?

15 A Would you repeat that for me, please?

16 Q I'll be glad to. If BellSouth were to file a tariff
17 offering that had the same discounts that are in your
18 Win Back promotion and the same term limitations, you
19 know, one year, two year, three year, had those
20 limitations in it, if BellSouth were to file that as a
21 tariff provision or as a promotion, and to remove the
22 restriction that is only available to former BellSouth
23 customers who switched to a CLEC, that the Complainant's
24 would withdraw their objection?